

E-Filed 3/30/09

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

FACEBOOK, INC.,

Plaintiff,

v.

STUDIVZ LTD; VERLAGSGRUPPE GEORG
VON HOLTZBRINCK GmBH; HOLTZBRINCK
NETWORKS GmBH; and HOLTZBRINCK
VENTURES GmBH

Defendants.

Case Number C 08-3468 JF (HRL)

**ORDER¹ RE MOTIONS FOR
ADMINISTRATIVE RELIEF**

RE: Docket Nos. 119 & 122

BACKGROUND

In this action for trade dress infringement, breach of contract, breach of the implied covenant of good faith and fair dealing, and violations of the federal Computer Fraud and Abuse Act and California Penal Code § 502(c), Plaintiff Facebook, Inc. ("Facebook") alleges that Defendants StudiVZ ("StudiVZ") and related corporate entities variously bearing the name

¹ This disposition is not designated for publication in the official reports.

1 Holtzbrink (“Holtzbrink,” collectively “Defendants”) created an illegal “knock-off” of
2 Facebook’s popular social utility website. Defendants have moved to dismiss for lack of
3 personal jurisdiction and on the ground that Germany is a more convenient forum. By a
4 previous administrative motion, Facebook requested a continuance of the hearing on
5 Defendants’ motions on the ground that it required additional discovery that it claimed
6 Defendants were withholding improperly. The Court denied Facebook’s request except with
7 respect to the issue of personal jurisdiction over Defendant StudiVZ. Nonetheless, for reasons
8 of judicial economy, the Court continued the hearing on all pending matters to April 10, 2009.

9 In the latest flurry of time-consuming, merits-oriented administrative motions, the parties
10 ask the Court to make various adjustments to the time for hearing the underlying jurisdictional
11 motions. Specifically, Facebook requests an additional continuance to resolve disputes over the
12 scope of personal jurisdiction discovery with respect to StudiVZ. StudiVZ, which itself has
13 requested a stay of all matters relating to personal jurisdiction on the ground that such discovery
14 has become costly and unwieldy, does not oppose Facebook’s motion with respect to personal
15 jurisdiction, but it objects to a further continuance of the motions to dismiss for *forum non*
16 *conveniens*. Facebook strenuously objects to any “bifurcation” of the hearing on the
17 jurisdictional issues.

18 DISCUSSION

19 Having reviewed the parties’ administrative motions, the underlying motions to which
20 they refer, and all other material currently before it, the Court is convinced that the course most
21 likely to serve the interests of judicial economy and fairness to the parties is to stay all
22 proceedings related to personal jurisdiction and to hear Defendants’ motions to dismiss on the
23 ground of *forum non conveniens*. In *Sinochem Int’l Trading Co. v. Malaysia Int’l Shipping*
24 *Corp.*, 549 U.S. 422 (2007), the Supreme Court held that because “*forum non conveniens* is a
25 non-merits ground for dismissal, . . . [a] district court . . . may dispose of an action by a *forum*
26 *non conveniens* dismissal, bypassing questions of subject-matter jurisdiction and personal
27 jurisdiction, when considerations of convenience, fairness, and judicial economy so warrant.”
28 *Id.* at 432 (citation omitted). Thus, “where subject-matter or personal jurisdiction is difficult to

1 determine, and *forum non conveniens* considerations weigh heavily in favor of dismissal,” a
2 court may decide *forum non conveniens* first. *Id.* at 432-36.

3 In the instant case, Defendants have shown that discovery related to personal jurisdiction
4 has grown complicated and burdensome. They also have presented a substantial argument with
5 respect to both the private and public *forum non conveniens* factors. Facebook has failed to
6 explain why any category of outstanding discovery would alter the relevant analysis.

7 Facebook’s argument with respect to the potential existence of form contracts providing for
8 venue in California is irrelevant to the question of *forum non conveniens*, which concerns the
9 relative convenience of the forum as between the parties, and with respect to the issues
10 presented by the particular lawsuit. Facebook’s only other contention is that further discovery
11 might reveal the existence of witnesses whose presence in the United States could tip the
12 balance of convenience in Facebook’s favor. That argument is wholly speculative. Indeed, in
13 attempting to rebut Defendants’ argument that the location of relevant witnesses favors
14 adjudication in a German forum, Facebook argued that the presence of witnesses in the United
15 States rendered the location factor neutral. Yet Facebook failed even generally to explain who
16 these witnesses are or how their testimony will be relevant to an action in which the allegedly
17 wrongful acts were committed by Germans acting in Germany, and where the alleged harm
18 appears to have been experienced primarily in Germany. Accordingly, Facebook has failed to
19 demonstrate that consideration of Defendants’ *forum non conveniens* arguments would be
20 premature.

21 In the interest of deciding the pending motions in the light of all relevant facts and
22 argument, and given the passage of considerable time since the filing of Facebook’s opposition
23 to the pending motions, the Court will permit Facebook to file supplemental opposition not to
24 exceed five pages in length on any issue relevant to *forum non conveniens*. Any such opposition
25 must be filed not later than 5 PM on Monday, April 6, 2009. Defendants may file supplemental
26 replies independently not to exceed five pages in length. Any such replies must be filed not later
27 than 5 PM on Friday, April 10, 2009. In order to accomodate the supplemental briefing, the
28 Court will continue the hearing on Defendants’ motions to Friday, April 17, 2009 at 9 AM.

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2 **IT IS SO ORDERED.**

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4 DATED: 3/30/09

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7 JEREMY FOGEL
8 United States District Judge
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1 This Order has been served upon the following persons:

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